

The ALJ found claimant has a compensable 35 percent impairment to his left lower extremity. On appeal, respondent contends claimant did not suffer accidental injury arising out of and in the course of his employment and, if he did, the resulting disability is less than the 35 percent awarded. Respondent also contends that if benefits are awarded it should be against the Kansas Workers Compensation Fund.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds the Award should be affirmed.

**Findings of Fact**

1. Claimant injured his left knee on April 26, 1993, while climbing to find a station on a tool. He became twisted and his knee popped. Respondent has offered evidence which respondent contends shows the injury could not have happened as claimed. The Board disagrees. The Board acknowledges that the evidence shows that claimant could have reached the station on the tool without climbing as he testified he did. But the evidence taken as a whole does, in the Board's view, establish more probably than not claimant suffered accidental injury arising out of and in the course of his employment.
2. Claimant reported the injury the next day and, after examination at Central Medical, respondent referred him to Dr. Robert L. Eyster.
3. Claimant also treated with Dr. Bradley W. Bruner. On August 11, 1995, Dr. Bruner performed surgery for a meniscus tear. Dr. Bruner rated claimant's impairment as 50 percent to the left leg.
4. Dr. Robert A. Rawcliffe evaluated claimant's injury at the request of respondent's counsel. He concluded claimant has a 20 percent impairment of function to his left leg.
5. Claimant did not have a preexisting handicap which caused or contributed to the injury of April 26, 1993.

**Conclusions of Law**

1. Claimant has the burden of proving his right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).
2. The Board concludes claimant has met his burden of proving accidental injury arising out of and in the course of his employment.
3. Giving equal weight to the impairment ratings by Dr. Bruner and Dr. Rawcliffe, the Board concludes claimant has a 35 percent permanent partial disability to the left lower extremity as a result of the compensable injury.
4. The Board agrees with, and affirms, the conclusion by the ALJ that the evidence in this record does not establish a basis for liability of the Kansas Workers Compensation Fund.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark on June 22, 1998, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1999.

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BOARD MEMBER

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BOARD MEMBER

c: Thomas C. Clarkson, Wichita, KS  
Frederick L. Haag, Wichita, KS  
Teresa L. Mah, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director